

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1601

Introduced by Assembly Member Frommer

February 21, 2003

An act to ~~add and repeal Sections 17053.17 and 23622 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy, amend Sections 19057, 19164, 19177, and 19182 of the Revenue and Taxation Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1601, as amended, Frommer. ~~Personal income and bank and corporation taxes: credit: qualified wages: Administration of taxes: tax shelters: penalties.~~

Existing law imposes various taxes and fees, and certain penalties and interest on late payments of those taxes and fees, and authorizes the Franchise Tax Board to make a deficiency assessment and to mail a notice of proposed deficiency assessment to a taxpayer, generally, within 4 years after the return required to be filed by the taxpayer is filed.

This bill would extend the statute of limitations applicable to the assessment of any deficiency by the Franchise Tax Board to 8 years in the case of any return filed on or after January 1, 1999, by a taxpayer who is an investor in a tax shelter, as defined.

Existing law provides specified conformity to federal income tax law with respect to penalties imposed on promoters or organizers of abusive tax shelters.

This bill would modify the federal income tax law provisions, as applied for purposes of the Personal Income Tax and the Corporation Tax Laws, to increase the amount of penalty imposed for promoting abusive tax shelters to 25% of the aggregate amount invested in the tax shelter.

Existing law requires an organizer of a tax shelter that is organized in California to furnish to the Franchise Tax Board a duplicate of the registration information required to be submitted to the Secretary of the Treasury. Existing law also imposes a penalty, by reference to the federal income tax laws, for failure to send a duplicate of the registration information to the Franchise Tax Board.

This bill would increase the amount of that penalty to 25% of the aggregate amount invested in the tax shelter.

Existing law imposes an accuracy-related penalty on any portion of an underpayment of tax required to be shown on a return. The amount of that penalty is determined by reference to the federal income tax law, and generally equals 20% of the amount of the underpayment of tax.

This bill, with respect to the underpayment of tax by a taxpayer who is an investor in an abusive tax shelter, as defined, would increase the amount of that penalty to 50% of the amount of the underpayment.

~~The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.~~

~~This bill would provide for a credit, under both laws, against those taxes for each taxable year beginning on or after January 1, 2004, in an amount equal to a specified percentage of the qualified wages, as defined, paid or incurred during the taxable year on or after January 1, 2004, and before January 1, 2014. This bill would specify that a qualified employee, as defined, must first commence his employment with a qualified taxpayer on or after January 1, 2004, and before January 1, 2009.~~

~~This bill would take effect immediately as a tax levy.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 17053.17 is added to the Revenue and~~
- 2 ~~SECTION 1. Section 19057 of the Revenue and Taxation Code~~
- 3 ~~is amended to read:~~

19057. (a) (1) Except in the case of a false or fraudulent return and except as otherwise expressly provided in this part, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year period or the period otherwise provided. For purposes of this chapter, the term “return” means the return required to be filed by the taxpayer and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit.

(2) (A) *Notwithstanding paragraph (1), in the case of a return filed by a taxpayer who is an investor in a tax shelter, as defined in subparagraph (B), every notice of a proposed deficiency assessment shall be mailed to the taxpayer within eight years after the return is filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the eight-year period.*

(B) *For purposes of this section, “tax shelter” means a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, if the primary purpose of that partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax.*

(C) *This paragraph shall apply to any return filed on or after January 1, 1999.*

(b) The running of the period of limitations provided in subdivision (a) on mailing a notice of proposed deficiency assessment shall, in a case under Title 11 of the United States Code, be suspended for any period during which the Franchise Tax Board is prohibited by reason of that case from mailing the notice of proposed deficiency assessment and for 60 days thereafter.

(c) Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) for any taxable year would otherwise expire, the Franchise Tax Board receives a written document, other than an amended return or a report required by Section 18622, signed by the taxpayer showing that the taxpayer owes an additional amount of that tax for that taxable year, the period for the assessment of an additional amount in

1 excess of the amount shown on either an original or amended
2 return shall not expire before the day 60 days after the day on
3 which the Franchise Tax Board receives that document.

4 (d) If a taxpayer determines in good faith that it is an exempt
5 organization and files a return as an exempt organization under
6 Section 23772, and if the taxpayer is thereafter held to be a taxable
7 organization for the taxable year for which the return is filed, that
8 return shall be deemed the return of the organization for the
9 purposes of this section.

10 *SEC. 2. Section 19164 of the Revenue and Taxation Code is*
11 *amended to read:*

12 19164. (a) (1) An accuracy-related penalty shall be imposed
13 under this part and shall be determined in accordance with the
14 provisions of Section 6662 of the Internal Revenue Code, relating
15 to imposition of accuracy-related penalty, *except as otherwise*
16 *provided in paragraph (3).*

17 (2) With respect to corporations, this subdivision shall apply to
18 all of the following:

19 (A) All taxable years beginning on or after January 1, 1990.

20 (B) Any other taxable year for which an assessment is made
21 after July 16, 1991.

22 (C) For purposes of this section, references in Section 6662(e)
23 of the Internal Revenue Code and the regulations thereunder,
24 relating to treatment of an affiliated group that files a consolidated
25 federal return, are modified to apply to those entities required to
26 be included in a combined report under Section 25101 or 25110.
27 For these purposes, entities included in a combined report pursuant
28 to paragraph (4) or (6) of subdivision (a) of Section 25110 shall be
29 considered only to the extent required to be included in the
30 combined report.

31 (3) (A) *With respect to a taxpayer who is an investor in an*
32 *abusive tax shelter, Section 6662(a) of the Internal Revenue Code*
33 *is modified by substituting “50 percent” in lieu of “20 percent.”*

34 (B) *For purposes of this section, “abusive tax shelter” means*
35 *a tax shelter, as defined in Section 6111(c) of the Internal Revenue*
36 *Code, that satisfies both of the following:*

37 (i) *Is required to be registered with the Secretary of the Treasury*
38 *as provided in Section 6111(a) of the Internal Revenue Code.*

39 (ii) *Has no economic substance.*

(b) The modifications to Section 6662 of the Internal Revenue Code by Public Law 103-66 and Public Law 103-465 shall apply with respect to returns filed for taxable years beginning on or after January 1, 1997.

(c) A fraud penalty shall be imposed under this part and shall be determined in accordance with the provisions of Section 6663 of the Internal Revenue Code, relating to imposition of fraud penalty.

(d) The provisions of Section 6664 of the Internal Revenue Code, relating to definitions and special rules, shall apply.

(e) The provisions of Section 6665 of the Internal Revenue Code, relating to applicable rules, shall apply.

SEC. 3. Section 19177 of the Revenue and Taxation Code is amended to read:

19177. (a) A penalty shall be imposed for promoting abusive tax shelters. The penalty shall be determined in accordance with the provisions of Section 6700 of the Internal Revenue Code, *as modified by subdivision (b).*

(b) *Section 6700(a)(2) of the Internal Revenue Code is modified by substituting the phrase "25 percent of the aggregate amount invested in such entity or arrangement referred to in subparagraph (A)" in lieu of the phrase "the \$1,000 or, if the person establishes that it is lesser, 100 percent of the gross income derived (or to be derived) by such person from such activity."*

SEC. 4. Section 19182 of the Revenue and Taxation Code is amended to read:

19182. (a) (1) A penalty shall be imposed for failure to furnish information pursuant to Section ~~48547~~ 18628 and the penalty amount shall be determined in accordance with Section 6707 of the Internal Revenue Code, *as modified in paragraph (2).*

(2) *Section 6707(a)(2) of the Internal Revenue Code is modified by substituting the phrase "25 percent of the aggregate amount invested in such tax shelter" in lieu of the phrase "the greater of (A) 1 percent of the aggregate amount invested in such tax shelter, or (B) \$500."*

(b) If the person required to register the tax shelter has complied, for federal purposes, with the requirements of Section 6111(d) of the Internal Revenue Code, relating to certain confidential arrangements treated as tax shelters, the person required to register the tax shelter shall be deemed to have

1 complied with the requirements of Section ~~18547~~ 18628 for
2 purposes of this part and no penalty shall be imposed under
3 subdivision (a).

4 (c) Article 3 (commencing with Section 19031) of this chapter
5 (relating to deficiency assessments) shall not apply in respect of
6 the assessment or collection of any penalty imposed under this
7 section.

8 ~~Taxation Code, to read:~~

9 ~~17053.17. (a) For each taxable year beginning on or after~~
10 ~~January 1, 2004, and before January 1, 2014, there shall be allowed~~
11 ~~a credit against the “net tax” (as defined in Section 17039) to a~~
12 ~~qualified taxpayer who employs a qualified employee during the~~
13 ~~taxable year. The credit is equal to the sum of each of the~~
14 ~~following:~~

15 ~~(1) One hundred percent of qualified wages in the first year of~~
16 ~~employment.~~

17 ~~(2) Eighty percent of qualified wages in the second year of~~
18 ~~employment.~~

19 ~~(3) Sixty percent of qualified wages in the third year of~~
20 ~~employment.~~

21 ~~(4) Forty percent of qualified wages in the fourth year of~~
22 ~~employment.~~

23 ~~(5) Twenty percent of qualified wages in the fifth year of~~
24 ~~employment.~~

25 ~~(b) For purposes of this section:~~

26 ~~(1) “Qualified wages” means:~~

27 ~~(A) That portion of wages paid or incurred by the taxpayer~~
28 ~~during the taxable year to a qualified employee in excess of the~~
29 ~~state average weekly wage.~~

30 ~~(B) Wages received during the 60-month period beginning~~
31 ~~with the first day the employee commences employment with the~~
32 ~~qualified taxpayer. Reemployment in connection with any~~
33 ~~increase, including a regularly occurring seasonal increase, in the~~
34 ~~trade or business operations of the qualified taxpayer does not~~
35 ~~constitute commencement of employment for purposes of this~~
36 ~~section.~~

37 ~~(2) “Qualified wages” does not include any wages for which~~
38 ~~a tax credit is claimed under Section 17053.34, 17053.36,~~
39 ~~17053.46, 17053.47, 17053.74, or 17053.75.~~

1 ~~(3) “State average weekly wage” means the average weekly~~
2 ~~wage paid by employers to employees covered by unemployment~~
3 ~~insurance, as reported to the Employment Development~~
4 ~~Department for the four calendar quarters ending on June 30 of the~~
5 ~~immediately preceding calendar year.~~

6 ~~(4) “Qualified employee” means an individual who meets~~
7 ~~both of the following requirements:~~

8 ~~(A) Is first employed by the qualified taxpayer on or after~~
9 ~~January 1, 2004, and before January 1, 2009.~~

10 ~~(B) Has not been employed by the qualified taxpayer for a~~
11 ~~period of at least five years immediately preceding the qualified~~
12 ~~employee’s commencement of employment with that qualified~~
13 ~~taxpayer.~~

14 ~~(c) “Qualified taxpayer” means a person or entity that meets~~
15 ~~both of the following:~~

16 ~~(A) The average of all weekly wages paid or incurred,~~
17 ~~exclusive of overtime wages, to all nonmanagerial,~~
18 ~~nonsupervisory employees is not less than the state average~~
19 ~~weekly wage.~~

20 ~~(B) Offers all employees coverage in an employer-sponsored~~
21 ~~health insurance plan.~~

22 ~~(d) Any credit amount allowed under this section to a taxpayer,~~
23 ~~who later is found not to have complied with the requirements of~~
24 ~~this section for a taxable year, beginning on or after January 1,~~
25 ~~2004, for which that credit amount was allowed, shall be~~
26 ~~recaptured in the first taxable year of the taxpayer beginning after~~
27 ~~the operative date of this section.~~

28 ~~(e) In the case where the credit allowed by this section exceeds~~
29 ~~the “net tax,” the excess may be carried over to reduce the “net~~
30 ~~tax” in the following year, and succeeding years if necessary, until~~
31 ~~the credit is exhausted.~~

32 ~~(f) This section shall remain in effect only until December 1,~~
33 ~~2014, and as of that date is repealed.~~

34 ~~SEC. 2. Section 23622 is added to the Revenue and Taxation~~
35 ~~Code, to read:~~

36 ~~23622. (a) For each taxable year beginning on or after~~
37 ~~January 1, 2004, and before January 1, 2014, there shall be allowed~~
38 ~~a credit against the “tax” (as defined in Section 23036) to a~~
39 ~~qualified taxpayer who employs a qualified employee during the~~

~~1 taxable year. The credit is equal to the sum of each of the
2 following:~~

~~3 (1) One hundred percent of qualified wages in the first year of
4 employment.~~

~~5 (2) Eighty percent of qualified wages in the second year of
6 employment.~~

~~7 (3) Sixty percent of qualified wages in the third year of
8 employment.~~

~~9 (4) Forty percent of qualified wages in the fourth year of
10 employment.~~

~~11 (5) Twenty percent of qualified wages in the fifth year of
12 employment.~~

~~13 (b) For purposes of this section:~~

~~14 (1) "Qualified wages" means:~~

~~15 (A) That portion of wages paid or incurred by the taxpayer
16 during the taxable year to a qualified employee in excess of the
17 state average weekly wage.~~

~~18 (B) Wages received during the 60-month period beginning
19 with the first day the employee commences employment with the
20 qualified taxpayer. Reemployment in connection with any
21 increase, including a regularly occurring seasonal increase, in the
22 trade or business operations of the qualified taxpayer does not
23 constitute commencement of employment for purposes of this
24 section.~~

~~25 (2) "Qualified wages" does not include any wages for which
26 a tax credit is claimed under Section 23621, 23622.7, 23622.8,
27 23634, 23636, or 23646.~~

~~28 (3) "State average weekly wage" means the average weekly
29 wage paid by employers to employees covered by unemployment
30 insurance, as reported to the Employment Development
31 Department for the four calendar quarters ending on June 30 of the
32 immediately preceding calendar year.~~

~~33 (4) "Qualified employee" means an individual who meets
34 both of the following requirements:~~

~~35 (A) Is first employed by the qualified taxpayer on or after
36 January 1, 2004, and before January 1, 2009.~~

~~37 (B) Has not been employed by the qualified taxpayer for a
38 period of at least five years immediately preceding the qualified
39 employee's commencement of employment with that qualified
40 taxpayer.~~

1 ~~(c) “Qualified taxpayer” means a person or entity that meets~~
2 ~~both of the following:~~

3 ~~(A) The average of all weekly wages paid or incurred,~~
4 ~~exclusive of overtime wages, to all nonmanagerial,~~
5 ~~nonsupervisory employees is not less than the state average~~
6 ~~weekly wage.~~

7 ~~(B) Offers all employees coverage in an employer-sponsored~~
8 ~~health insurance plan.~~

9 ~~(d) Any credit amount allowed under this section to a taxpayer,~~
10 ~~who is later found not to have complied with the requirements of~~
11 ~~this section for a taxable year, beginning on or after January 1,~~
12 ~~2004, for which that credit amount was allowed, shall be~~
13 ~~recaptured in the first taxable year of the taxpayer beginning after~~
14 ~~the operative date of this section.~~

15 ~~(e) In the case where the credit allowed by this section exceeds~~
16 ~~the “tax,” the excess may be carried over to reduce the “tax” in~~
17 ~~the following year, and succeeding years if necessary, until the~~
18 ~~credit is exhausted.~~

19 ~~(f) This section shall remain in effect only until December 1,~~
20 ~~2014, and as of that date is repealed.~~

21 ~~SEC. 3. This act provides for a tax levy within the meaning of~~
22 ~~Article IV of the Constitution and shall go into immediate effect.~~
23